

COVID-19 in Mexico: A Year in Review

Eugenio Velasco

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Close to a year since its first confirmed case of COVID-19, several [indicators](#) place Mexico among the countries that have suffered the worst effects of the pandemic. This post offers a critical overview of the governmental responses to the outbreak. It begins by describing the actions taken by officials of the different branches and levels of government. This is followed by an assessment of the many omissions and deficiencies that have characterized the response of the Federal Executive. Lastly, it closes by offering an outlook for 2021.

Description of the Governmental Responses to the Pandemic

A description of the bulk of the governmental responses to the pandemic appears in my [previous contribution](#) to this blog (I have also offered a more comprehensive account of them [elsewhere](#)). In summary, no use has been made of the emergency powers regime provided in the Constitution. Instead, the federal government has only summoned the statutory emergency powers granted to it by the National Health Law. These powers centralize all executive authority in the hands of the Federal Ministry of Health and are, by their very nature, susceptible to amendment by the federal legislature and subject to review by the federal courts. Although these statutory powers are sweeping in scope, their actual application has been scant: save for the mandatory closure of schools and the suspension of non-essential economic activities (defined in very broad terms) no other restrictions to civil liberties have been enacted. Instead, the government's main social distancing strategy has consisted in entreating the population to stay at home and to observe basic preventative measures when going out. Moreover, starting in June 2020, the suspension of non-essential economic activities was relaxed in accordance with a color-coded public alert system that is updated periodically based on several [risk factors](#). Although the federal government has [increased hospital capacity](#), the [economic assistance](#) that it has provided to some individuals and firms is negligible when [compared](#) to the fiscal measures adopted by other emerging economies, and its [austerity policy](#) has severely weakened the civil service. Notwithstanding the abovementioned centralization sanctioned by the emergency framework set up by the National Health Law, this has not stopped states and municipal authorities from issuing [thousands of regulations](#). While many of these simply reproduce those of the federation, others provide additional economic benefits or establish further restrictions to civil liberties, with the latter raising some concerns regarding their constitutionality.

The Federal Congress, for its part, has played a relatively minor role during the pandemic. The Deputy Minister of Health, Hugo López-Gatell (the federal government's spokesperson throughout this sanitary emergency), has only appeared

before Senate select committees on two occasions. In its legislative capacity, the Federal Congress has enacted two relevant pieces of legislation. In April 2020, it [issued](#) an Amnesty Law intended to benefit first-time offenders accused or convicted of minor drug offenses and abortion, among other crimes, as well as indigenous individuals alleging due process violations (with a couple of state legislatures also adopting similar statutes). More recently, in January 2021, it [amended](#) the Federal Labor Law to incorporate several rights of employees working from home. Also in April 2020, the President presented a [controversial proposal](#) which would have given him ample discretion to modify the budget in order to face economic emergencies. However, lack of support among parliamentary parties appears to have brought its consideration to a halt. At the local level, and contrary to the case of the Federal Congress, 75% of [state legislatures](#) have amended their standing orders in order to allow for virtual sessions. Nevertheless, many of them have failed to keep up-to-date records of their online parliamentary activities. Moreover, in at least three major entities (Nuevo León, Jalisco, and Mexico City) extraordinary powers over budget management were accorded to the local executives.

As regards the Federal Judiciary, while it temporarily suspended all but its most urgent responsibilities during the first months of the pandemic, it has since resumed its functions remotely. At the state level, the ability of the judiciaries to continue operating has been [disparate](#). The adjudication of cases challenging some aspect of the governmental responses to the pandemic has thus far been handled by the lower federal courts. The large number of first-instance and appellate courts across the country makes it difficult to offer a comprehensive account of the judgements that have been rendered thus far. Some of the more notable cases that have been reported deal with claims presented by medical professionals regarding their labor conditions. That several *amparo* proceedings have been initiated by healthcare workers is hardly surprising in light of the [high mortality rate](#) among this workforce.

Critical Assessment of the Governmental Responses to the Pandemic

In light of the responsibility that article 73.XVI.2a of the Constitution and article 13.A.V of the National Health Law accord to the Federal Executive in cases of sanitary emergencies, in what follows I will concentrate on the actions that have been undertaken by this agent. Critically assessing the Mexican government's responses to the pandemic from a legal standpoint is challenging because, in opposition to the general concern regarding the potential for abuse of emergency powers and the lasting impact that their invocation may have for the constitutional regimes of liberal democratic societies, they come as close to a nonevent as is imaginable given this worldwide plight. This is not to say that an authority's omissions are less serious than their excesses. However, the line between a questionable — or even faulty — policy decision and a human rights violation is less clear-cut when the charge being levelled against the government is that of not taking enough steps to lessen the [economic impact](#) of a crisis such as this one. In any case, the government's [resistance](#) to significantly increase public spending in order to alleviate some of the hardships brought about by the pandemic is one of

the major shortcomings of its strategy. Although from the beginning of its term the current administration instituted several cash transfer programs in order to benefit certain groups (such as students and the elderly), these are not tailored to the current situation and may prove to be an inappropriate allocation of resources under the present circumstances (especially, when considering the [alleged insufficiency](#) of the public health budget).

It is important to note that the decision not to make any major adjustments to government spending during this contingency is not the result of some political impasse or economic impossibility. The fact that the President's party and allies hold comfortable majorities in both chambers of the Federal Congress and the continued [investment](#) in some major infrastructure projects (a touristic railroad, an airport, and an oil refinery) that he has championed throughout his administration proves otherwise. Rather, the President's deeds might evidence a single-minded attempt to pull through this crisis without deviating from the script that he had envisioned for his presidency, as well as a conception of the State that extols private virtue. In regard to this last point, he recently endorsed a document titled [Ethical Guide for the Transformation of Mexico](#) which states that "the family is the main social security institution in Mexico". In addition, in March 2020, he manifested his traditional value-system when he [stated](#) that women in households were the equivalent of "millions of nurses".

Another major shortfall of the government's response to the pandemic relates to its communication strategy. This issue predates the pandemic by a couple of months when the public health system suffered a major overhaul that has resulted in the deterioration of [several indicators](#). During the pandemic, the daily press briefings of the Deputy Minister of Health have been of questionable value. For instance, he has repeatedly equivocated regarding the advisability of wearing facemasks, presumably because of the President's reluctance to do so. More recently, when pressed for information regarding the updating of the color-coded public alert system, he [evaded](#) the question by stating that it was "to some degree inconsequential". In fact, some [reports](#) state that the official figures have been purposely misleading in order avoid changing the color of the public alert system which would lead to the suspension of non-essential economic activities. Finally, although he advised people to stay at home during the end-of-year celebrations, he was spotted taking a [holiday](#) (a matter which has resulted in the sacking or resignation of public officials in other countries with more robust cultures of political accountability).

Another matter of concern relates to vulnerable groups such as migrants and prisoners. Although, as mentioned above, the Federal Congress issued an Amnesty Law with a view to preventing the spread of the pandemic due to prison overcrowding, to date no individuals have benefitted from this statute because of the executive's delay in setting up the commission charged with reviewing the individual petitions. In fact, partly due to the recent constitutional amendments which call for defendants to be remanded in custody if they are charged with a plethora of criminal offenses, the prison population in Mexico has actually [increased](#) over the past year. Migrants, for their part, face a similar [situation](#) in migrant detention centers.

Perhaps, the governmental response to the pandemic could be improved to some extent by the involvement of the National Health Council in the decision-making procedures. Although the precise role of this constitutionally sanctioned body in relation to the Federal Ministry of Health is unclear and despite the fact that it is also subordinate to the President, its collegiate nature might prove beneficial. This council is constituted by cabinet members, health care professionals, academics, and other members of civil society. Thus far, its role has been limited to declaring the sanitary emergency and publishing a [Bioethical Guide](#) to determine the distribution of scarce medical resources.

Outlook for 2021

It is difficult to anticipate any major modifications to the handling of the pandemic for the foreseeable future. Throughout the last year and in spite of the considerable number of confirmed cases and deaths, the federal government has remained unshakeable in its handling of this crisis. It is hard to think of some reason for changing its priorities at this stage. The midterm elections to elect all 500 members of the lower chamber of the Federal Congress (which will take place over the summer) might shake up the political landscape, potentially increasing parliamentary oversight and incentivizing budgetary changes. Although the Supreme Court has yet to decide on a case concerning the government's handling of the pandemic, it is not clear whether its jurisprudential record regarding the protection of social and economic rights is strong enough to enjoin the executive to step up its relief efforts. Finally, the vaccination process will raise some major administrative difficulties. Already, there is concern that vaccines will be used for electoral purposes, especially since the President [announced](#) the involvement of party-political civil servants (commonly known as “servants of the Nation”) in their rollout.

